

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of

Amendment of Section 73.622(b),
Table of Allotments,
Digital Television Broadcast Stations.
(Macon, Georgia)

MM Docket No. 01-1
RM-10013

REPORT AND ORDER
(Proceeding Terminated)

Adopted: February 1, 2002

Released: February 6, 2002

By the Chief, Video Services Division:

1. At the request of Gannett Georgia, L.P. ("Gannett"), licensee of station WMAZ-TV, NTSC channel 13, Macon, Georgia, the Commission has before it the Notice of Proposed Rule Making (*Notice*), 16 FCC Rcd 193 (2000), proposing the substitution of DTV channel 4 for station WMAZ-TV's assigned DTV channel 45. Gannett filed comments reaffirming its interest in applying for DTV channel 4, if allotted to Macon. Macon Urban Ministries, Inc., d/b/a Good News Television ("Good News"), licensee of NTSC television station WGNM, Macon, Georgia, and Georgia Public Telecommunications Commission ("Georgia Public"), licensee of noncommercial educational television station WGTV-TV, Athens, Georgia, filed counterproposals.¹ Gannett and Good News filed reply comments.² Additional comments were filed by Gannett, Georgia Public and Good News.

2. In its counterproposal, Georgia Public requests the substitution of DTV channel 4 for station WGTV-TV's assigned DTV channel 22 at Athens, Georgia. Our staff review indicated that Georgia Public's counterproposal would cause impermissible interference to station WYFF-TV, DTV channel 4 at Greenville, South Carolina. Therefore, Georgia Public's counterproposal was found to unacceptable for consideration and was not placed on public notice.

3. Approximately 5 ½ weeks after the initial comment period closed for filing counterproposals, Georgia Public filed a "Motion to Accept Late-Filed Reply Comments and Reply Comments." In its pleading, Georgia Public seeks permission to submit a late-filed

¹ Good News's counterproposal was found to be unacceptable for consideration and was not place on public notice. Good News's requests the substitution of DTV channel 45 for station WGNM(TV)'s assigned DTV channel 50 at Macon, Georgia. However, we find that Good News's request does not fall within the scope of this proceeding's Notice, because there is no mutual exclusivity between the allotment of DTV channel 4 at Macon and Good News's request to substitute DTV 45 for DTV channel 50 at Macon.

² Since Good News's counterproposal is unacceptable, it's responsive comments and Gannett's need not be considered.

corrective engineering statement to reflect a counterproposal that will satisfy the Commission's technical criteria. It argues that the Commission routinely accepts reply comments filed out of time because such pleadings, even if late, allow the Commission to assemble a full and adequate record upon which to base a decision in a given proceeding. It cites Kimberly, Idaho, 15 FCC Rcd 10298 (2000); Brunson Communications, Inc. v. RCN Telecom Services, Inc. 15 FCC Rcd 12883 (2000); Appleton, New London and Suring, Wisconsin, 10 FCC Rcd 7712 (1995); Wallace, Idaho and Lolo, Montana, 14 FCC Rcd 21110 (1999); and Benavides, Bruni, and Rio Grande City, Texas, 13 FCC Rcd 2096 (1998), as cases that demonstrate where the Commission as accepted late-filed comments.

4. Although Georgia Public attempted to correct the technical deficiency with its counterproposal by filing a corrected engineering statement that includes different coordinates, ERP and HAAT, we find that the amended counterproposal is unacceptable. Counterproposals must be technically and procedurally correct *when initially filed* and may not be amended at a later date. See Section 1.420 of the Commission Rules; see also Broken Arrow and Bixby, Oklahoma, and Coffeyville, Kansas 3 FCC Rcd 6507 (1988), recon. denied 4 FCC Rcd 6981 (1989); Fort Bragg, California, 6 FCC Rcd 5817 (1991); and, Detroit, Howe and Jacksboro, Texas, 13 FCC Rcd 15591 (1998). In addition, we disagree with Georgia Public's claim that the Commission routinely accepts late-filed reply comments. To support this argument, Georgia Public cites various Commission decisions where the Commission has accepted submissions, accompanied by motions to accept late-filed pleadings, because their acceptance would provide a more complete record for resolution for these proceedings. However, we find that none of these cases are on point, since none of the cases cited by Georgia Public involve the acceptance of a late-filed amendment attempting to correct a technically unacceptable counterproposal. As a result of the technical deficiency inherent in Georgia Public's counterproposal, the counterproposal is rejected.³

5. We believe the public interest would be served by substituting DTV channel 4 for DTV 45 since it would permit station WMAZ-TV to reduced its power utility costs and increase its service area. DTV channel 4 can be allotted to Macon, Georgia, in compliance with the principle community coverage requirements of Section 73.625(a) at coordinates (32-45-10 N. and 83-33-32 W.). In addition, we find that this channel is acceptable under the 2 percent criterion for *de minimis* impact that is applied in evaluating requests for modification of initial DTV allotments under Section 73.623(c)(2) for Station WMAZ-DT with the following specifications:

<u>State & City</u>	<u>DTV Channel</u>	<u>DTV power (kW)</u>	<u>Antenna HAAT (m)</u>	<u>DTV Service Pop. (thous.)</u>
GA Macon	4	5.0	238	683

6. Accordingly, pursuant to the authority contained in Sections 4(i), 5(c)(1), 303(g) and (r) and 307(b) of the Communications Act of 1934, as amended, and Sections 0.61, 0.204(b) and

³ Since Georgia Public's late-filed reply comments will not be considered, Good News and Gannet's motions of opposition to accept Georgia Public's late-filed reply comments are moot.

0.283 of the Commission's Rules, IT IS ORDERED, That effective March 25, 2002, the DTV Table of Allotments, Section 73.622(b) of the Commission's Rules, IS AMENDED, with respect to the community listed below, to read as follows:

<u>City</u>	<u>Channel No.</u>
Macon, Georgia	4, 16, 40, 50

7. IT IS FURTHER ORDERED, That within 45 days of the effective date of this Order, Gannett Georgia, L.P. shall submit to the Commission a minor change application for a construction permit (FCC Form 301) specifying DTV Channel 4 in lieu of DTV Channel 45 for station WMAZ-TV.

8. IT IS FURTHER ORDERED, That this proceeding IS TERMINATED.

9. For further information concerning this proceeding, contact Pam Blumenthal, Mass Media Bureau, (202) 418-1600.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Services Division
Mass Media Bureau